

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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August 14, 2001

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GSBCA 15564-RELO

In the Matter of GREGORY R. LITTIN

Gregory R. Littin, Mangilao, Guam, Claimant.

Susan R. Sheely, Chief, Travel Management Branch, United States Geological Survey, Department of the Interior, Reston, VA, appearing for Department of the Interior.

**HYATT**, Board Judge.

Claimant, Gregory Littin, is an employee of the United States Geological Survey (USGS). In March 1999, he accepted a transfer from Flagstaff, Arizona, to USGS's Hawaii District, to be stationed in Guam. His claim concerns entitlement to a home marketing incentive payment arising from the sale of his home in Flagstaff. For the reasons stated, we find that the agency has properly denied the claim.

Background

In connection with the transfer, Mr. Littin was provided various written materials and forms offering information about his relocation benefits, including a handbook and a form to request contractor-provided relocation services. One of the benefits described to Mr. Littin was the availability of an incentive program applicable to the sale of his residence in Arizona. Essentially, Mr. Littin was advised that he could receive a five percent incentive payment if he found a buyer on his own, but was not clearly informed that he needed to use the relocation contractor to qualify for the incentive payment. In addition, Mr. Littin was not provided with a copy of the Department of the Interior's (DOI's) internal memorandum describing the procedural prerequisites for qualifying to participate in the program.

After he received his official travel orders in April 1999, Mr. Littin contacted a realtor and placed his house on the market. On May 6, he submitted the enrollment form for the contractor relocation services program. At that time the contractor used by DOI was Cendant Mobility. Between May 6 and June 7, the USGS district office handling Mr. Littin's relocation called Cendant Mobility on two occasions and inquired about the status of Mr.

Littin's enrollment in the program, informing Cendant Mobility that Mr. Littin had not been contacted. DOI was told he was in Cendant Mobility's computer system and would be contacted.

Meanwhile, on May 16, Mr. Littin received an offer on his house. At that time, he again inquired about the correct procedures for qualifying for an incentive payment. The district office told him that Cendant Mobility would handle the marketing and sale of his home. Although he could use a realtor of his choice, he needed to inform Cendant that his house was listed and he should use an exclusion clause in his contractual arrangements with the realtor.<sup>1</sup> The district office further explained that once Cendant made an offer for his house he would have sixty days to accept or decline it.

On May 18, Mr. Littin accepted the bid he had received on his house. His contract to sell the property included a provision that he could sell the property to the relocation contractor should the sale not be closed. A closing date was set for June 30.

Mr. Littin reported to duty in Guam on June 7. He was finally contacted by the relocation contractor's representative in mid-June. He asked the contractor's representative to call his spouse, who had remained in Arizona for the closing on the sale of the house. The representative called Mr. Littin's spouse, but did not request or advise Mrs. Littin to turn the house over to Cendant Mobility for final sale. She simply asked to be informed if the sale fell through. The sale took place at the end of June.

In August, the district office requested cancellation of the relocation services contract because the services were not used to sell claimant's house. The district office mistakenly believed at that time that it was not necessary to use a relocation services contractor to qualify for the home marketing incentive payment program and did not realize that Mr. Littin could not be given an incentive payment in the absence of participation in the program.

Subsequently, when the district office attempted to process Mr. Littin's real estate expenses for reimbursement, it was informed that the incentive payment could not be made because Mr. Littin was not eligible for it. The agency recognizes that Mr. Littin was not adequately advised about what he needed to do to qualify for the home marketing incentive program, but has informed Mr. Littin that there is no redress for this problem other than to request the Board's review. USGS forwarded the claim for our review.

### Discussion

Under 5 U.S.C. § 5724c (Supp. V 1999) federal agencies are permitted to enter into relocation services contracts with private firms to provide a variety of relocation services to employees who are transferred. These services include arranging for the purchase by the relocation services contractor of a transferred employee's residence at the old duty station

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<sup>1</sup> An exclusion clause permits the employee to sell the residence to the relocation services company without being personally obligated to pay a commission to the real estate agent. Instead, the agent would be paid a commission by the relocation services company, assuming the offer is accepted by the relocation services company.

under a home sales program. See Charles T. Loverdi, GSBCA 14232-RELO, 98-2 BCA ¶ 29,795; Dan R. Mayer, GSBCA 14347-RELO, 98-1 BCA ¶ 29,506 (1997); Paul E. Marshall, GSBCA 13811-RELO, 97-2 BCA ¶ 29,036. The relocation services program was subsequently modified by the Federal Employee Travel Reform Act of 1996 to add a home marketing incentive program. 5 U.S.C. § 5756. Under this program an agency may pay an employee who is transferred in the interest of the Government an amount to encourage the employee to aggressively market his or her residence at the former official station when (1) the residence is entered into a relocation services program under which the private contractor will purchase the house; (2) the employee finds a buyer who completes the purchase of the residence through the program; and (3) the sale of the residence results in a reduced cost to the Government. Id.; Donald L. Boyle, GSBCA 15080-RELO, 00-1 BCA ¶ 30,653.

The home marketing incentive program is implemented in the Federal Travel Regulation (FTR) under part 302-14. Subpart A establishes the circumstances under which an employee may qualify for an incentive payment; subpart B describes the agency's responsibilities should it decide to offer an incentive. Under the FTR, it is within the discretion of each agency whether to choose to establish a home marketing incentive program. 41 CFR 302-14.4 (1999); see Boyle; Randolph S. Reynolds, GSBCA 14728-RELO, 99-1 BCA ¶ 30,366. The agency is not required to offer an incentive. If it does, however, the payment made may not exceed the savings realized in payments to the relocation services company. 41 CFR 302-14.100.

The FTR further delineates the circumstances under which a transferred employee may qualify for an incentive payment. The employee may receive a payment when (a) the residence is entered in the home sale program; (b) the employee has independently and aggressively marketed the property; (c) the employee has found a bona fide buyer as a result of independent marketing efforts; (d) the employee has transferred the residence to the relocation services provider; (e) the agency realizes reduced fee expenses as a result of the employee's independent marketing efforts; and (f) any other conditions established by the agency have been met. 41 CFR 302-14.5.

DOI announced its intention to participate in the home incentive program in a memorandum, dated March 31, 1997, which was circulated by the Department's Office of Financial Management. This memorandum stated that the home marketing incentive program was available and summarized the terms under which it would apply. Under the memorandum, the program is available to all DOI employees who transfer in the interest of the Government and meet the criteria set forth in the FTR. The memorandum provided that the incentive payment will be the lesser of 1) five percent of the price the third party relocation services contractor paid the employee for the residence, or 2) the Government savings resulting from the sale. USGS has also incorporated similar statements into instructions implementing the FTR. These instructions state that to earn the home marketing incentive allowance, the relocating employee must use the home sale program, find a qualified buyer for the residence, and turn the sale over to the relocation services contractor.<sup>2</sup>

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<sup>2</sup> DOI's implementing instructions are available at <http://www.doi.gov/pfm/oden/ch302-14.html>.

Despite the fact that claimant intended and tried diligently to qualify for the home marketing incentive program, and did not receive adequate guidance on how to preserve his entitlement to an incentive payment, on these facts we cannot find entitlement to a payment. It is unfortunate that the process of enrolling in the home sales program could not have been effected more quickly and that the contractor did not respond more promptly to claimant's enrollment in the program. Nonetheless, to qualify for a payment, the residence must have been enrolled in the home sales program and the residence must also have been transferred to the relocation services company. That did not occur here. Moreover, since claimant's house sold so quickly, and he did not actually participate in the relocation services contractor's home sales program, there is no way to determine what savings occurred. As we

stated in Regina M. Rochefort, GSBCA 15127-RELO, 00-1 BCA ¶ 30,879, "It is now impossible to recreate history to enable claimant to properly invoke the home sale incentive program." This claim cannot be sustained. Accord Michael G. Rupert, GSBCA 15049-RELO (Mar. 16, 2000).

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CATHERINE B. HYATT  
Board Judge